



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15-C0001]

One World Technologies, Inc., and Baja, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with One World Technologies, Inc., and Baja, Inc., containing a civil penalty of \$4.3 million dollars (\$4,300,000.00 U.S. dollars), within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.¹

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (INSERT DATE THAT IS 15 CALENDAR DAYS FROM PUBLICATION DATE).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15-C0001 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

¹ The Commission voted (4-1) to provisionally accept this Settlement Agreement and Order. Chairman Elliot F. Kaye and Commissioners Robert S. Adler, Marietta S. Robinson and Joseph P. Mohorovic voted to provisionally accept the Settlement Agreement and Order. Commissioner Ann Marie Buerkle voted to reject the Settlement Agreement and Order.

FOR FURTHER INFORMATION CONTACT: Daniel Vice, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-6996. SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

October 27, 2014.

Todd A. Stevenson,
Secretary.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)	
)	
)	
One World Technologies, Inc.,)	CPSC Docket No.: 15-C0001
and)	
Baja, Inc.)	
)	

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051–2089 and 16 C.F.R. § 1118.20, One World Technologies, Inc. and Baja, Inc. (the Firm), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Baja, Inc. (Baja) is incorporated in Delaware with its principal place of business in Anderson, South Carolina. One World Technologies, Inc., is a Delaware corporation with its principal offices in Anderson, South Carolina. One World Technologies, Inc., and Baja are corporate affiliates.

STAFF CHARGES

4. Baja imported and sold nationwide in the United States approximately 308,000 minibikes and go-carts with model numbers beginning with BB65, DB30, DN65, DR90, HT65, MB165, MB196, SD65, TR65, WR65, and WR90 (Subject Products).

5. The Subject Products (a) contain a defect which could create a substantial product hazard, and (b) create an unreasonable risk of serious injury because the gas cap can leak or detach from the fuel tank, posing a fire and burn hazard to consumers, and because the throttle can stick due to an improperly positioned fuel line and throttle cable.

6. The Subject Products are “consumer products,” and at all relevant times, Baja was a “manufacturer and distributor” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (7), (8), (9) and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (7), (8), (9) and (11).

7. Baja received four consumer reports of fires that occurred as a result of a leaking gas cap, some of which resulted in burn injuries to consumers, including children.

8. The family of a child who alleged that he was injured when a gas cap leak on a WR65 minibike resulted in a fire sued Baja.

9. The Firm settled personal injury claims of consumers who were injured as a result of a leaking gas cap.

10. Baja received approximately two dozen consumer reports of stuck throttles in the Subject Products.

11. Baja received communications from retailers reporting that consumers had experienced sudden acceleration while riding the Subject Products.

12. Baja worked with the manufacturer to devise design changes to shorten the fuel line and remedy the hazard. Baja then implemented the design changes but did not notify consumers who owned the Subject Products about the design changes.

13. The Firm had information which reasonably supported the conclusion that the Subject Products (a) contained a defect which could create a substantial product hazard, and (b) created an unreasonable risk of injury, requiring immediate reporting to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b). The Firm failed to so report.

14. The Firm did not report to the Commission under section 15(b) of the CPSA with respect to the Subject Products until June 2, 2010.

15. In failing to inform the Commission about Subject Products immediately as required by section 15(b) of the CPSA, the Firm knowingly violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in CPSA section 20(d), 15 U.S.C. § 2069(d).

16. Pursuant to CPSA section 20, 15 U.S.C. § 2069, the Firm is subject to civil penalties for its knowing violation of CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

THE FIRM’S RESPONSE

17. This Agreement does not constitute an admission by the Firm to the charges set forth in paragraphs 4 through 16, including but not limited to the charge that the Subject Products contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and the charge that the Firm failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

18. The four reports of fires that occurred as a result of a leaking gas cap cited by the staff were out of over 250,000 units on the market. In two of the instances, the gas cap was not available for Baja's inspection and in the third instance the unit was so badly damaged by fire that Baja could not determine the cause of the incident.

19. The fourth incident involved a child who was badly burned and who filed suit. However, it was the opinion of Baja's expert, following product inspections that took place in 2009 and 2011, that the fuel leak came from a damaged fuel line, that the bike had not been properly maintained and that the gas cap, a standard bayonet cap, was not defective. This was the only one of the four cases in which a suit was filed, or in which Baja settled a lawsuit.

20. The Firm received reports from two retailers referred to by the staff during the period 2008-2009 when there were over 150,000 units in use. Following the required pre-sale inspection of the vehicles, the retailers discovered a loose fuel line. The units were fixed before they were sold to consumers and no injuries were reported. There were no prior reports of a loose fuel line.

21. In an effort to minimize the possibility that units with a loose fuel line would be delivered to retailers in the future, Baja contacted the manufacturer to improve its pre-shipment inspection procedures and reduce the length of the fuel line.

22. Although two dozen consumers submitted reports of a stuck throttle, they did not claim that these were caused by an improperly positioned fuel line and throttle cable.

23. The consumers reported only a stuck throttle which could have many other potential causes besides an improperly positioned fuel line and throttle cable, including: debris hanging up the throttle cable or in the carburetor; worn, broken or kinked throttle cable; dirt

under or on the throttle slide and other damage caused by poor maintenance or misuse of a vehicle.

24. The Firm has entered into this settlement to avoid the cost, distraction, delay, uncertainty and inconvenience of protracted litigation or other proceedings.

AGREEMENT OF THE PARTIES

25. Under the CPSA, the Commission has jurisdiction over the matter involving Subject Products and over the Firm.

26. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, the Firm shall pay a civil penalty in the amount of four million three hundred thousand dollars (US\$4,300,000.00), which shall be due and payable within twenty calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov>.

27. The parties agree that this settlement figure is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, the Firm and the Firm's representatives (including representations set forth in the Agreement).

28. The Firm currently has a written Post-Sale Product Safety Compliance Program, an established Product Hazard Committee and a Product Safety Education and Training Program (collectively, the Programs), designed to ensure compliance with the statutes and regulations enforced by the Commission (CPSC authority). These Programs contain, or will be modified to contain, the following elements:

- a) written standards and policies;

- b) systematic procedures for (i) reviewing and assessing reports, claims and other information (including consumer and retailer incident reports and personal injury claims) for potential safety issues, including the potential existence of a substantial risk of injury or a defect, and (ii) referring such reports, claims and other information to appropriate personnel responsible for complying with CPSC authority;
- c) a mechanism for confidential employee reporting of compliance-related questions or concerns to a senior manager with authority to act as necessary;
- d) effective communication of company compliance-related policies and procedures to all employees, through training programs or otherwise;
- e) senior manager responsibility for compliance and senior manager accountability for violations of the statutes and regulations enforced by the Commission;
- f) oversight of compliance by the Firm's governing body; and
- g) retention of all compliance-related records for at least five years, and availability of such records to CPSC staff upon request.

29. It is the Firm's policy and the Firm agrees to maintain and enforce a system of internal controls and procedures designed to ensure that:

- a) information required to be disclosed by the Firm to the Commission is recorded, processed, and reported in accordance with applicable law;
- b) all reporting made to the Commission is timely, truthful, complete, and accurate; and

- c) prompt disclosure is made to the Firm management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect the Firm's ability to record, process, and report to the Commission in accordance with applicable law.

30. Upon request of staff, the Firm shall provide written documentation of any material changes in the Programs.

31. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by the Firm or a determination by the Commission that the Firm violated the CPSA.

32. Following staff's receipt of the Agreement executed on behalf of the Firm, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If, within fifteen calendar days, the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

33. The Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon the Firm, and (ii) the date of issuance of the final Order, the Agreement shall be in full force and effect and shall be binding upon the parties.

34. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon the Firm, and (ii) the date of issuance of the final Order, for good and valuable consideration, the Firm hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following actions or remedies in connection with the matters described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether the Firm failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

35. Upon request of staff, the Firm shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate the Firm's compliance with the terms of the Agreement.

36. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

37. The Firm represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of the Firm and each of its successors and/or assigns, enforceable against the Firm in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of the Firm represent and warrant that they are duly authorized by the Firm to execute the Agreement.

38. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute the Agreement.

39. The Agreement is governed by the laws of the United States.

40. The Agreement and the Order shall apply to, and be binding upon the Firm and each of its subsidiaries, successors, transferees, and assigns, and a violation of the Agreement or Order may subject such entities to appropriate legal action.

41. The Agreement and the Order constitute the complete agreement among the parties on the subject matter contained herein and therein.

42. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and shall not be construed against any party for that reason in any subsequent dispute.

43. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

44. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and the Firm agree that severing the provision materially affects the purpose of the Agreement and Order.

BAJA, INC.

Dated: 10/13/14

By:

Michael Konick
Treasurer

ONE WORLD TECHNOLOGIES, INC.

Dated: 10/13/14

By: _____
Michael Konick
Chief Financial Officer

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

Mary T. Boyle
Deputy General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: 10/14/14

By: _____
Daniel Vice
Trial Attorney

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:

One World Technologies, Inc.,
and
Baja, Inc.

CPSC Docket No.: 15-C0001

ORDER

Upon consideration of the Settlement Agreement entered into between One World Technologies, Inc., and Baja, Inc. (the Firm), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over the Firm, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that the Firm shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of four million three hundred thousand dollars (US\$4,300,000.00), within twenty calendar days after receiving service of the Commission's final Order accepting the Settlement Agreement. Upon failure of the Firm to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by the Firm at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If the Firm fails to make such a payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 27th day of October, 2014.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2014-25818 Filed 10/29/2014 at 8:45 am;
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